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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1967

No. 74

JOHN FRANCIS PETERS,

*Appellant,*

v.

STATE OF NEW YORK,

*Appellee.*

ON APPEAL FROM THE COURT OF APPEALS OF THE  
STATE OF NEW YORK

**SUPPLEMENTAL BRIEF FOR THE APPELLEE**

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**Statement**

This supplemental brief is submitted to the Court pursuant to Rule 41 (5) of the Rules of this Court in order to permit the appellee to comment on the newly decided case of *People v. Taggart*, 20 N. Y. 2d 335.

**POINT II**

It seems to be unavoidable that the paragraph of the appellee's ~~brief~~ which begins at the bottom of page 13

and ends at the top of page 14 be withdrawn due to the holding of the New York Court of Appeals in *People v. Taggart*, *supra*. The view which we expressed in the main brief, i.e., that the New York Code of Criminal Procedure, §180-a, did not authorize a search as opposed to a frisk, appeared to be warranted by the authorities then available, but it has now been invalidated by *Taggart*. We abandon our position with some reluctance, however, because it appears incontrovertible that the Court of Appeals endorsed the search in that case solely by reason of the highly exigent circumstances there presented.

Even the acknowledgment, though, that *Taggart* authorizes the full blown search referred to in *People v. Rivera*, 14 N. Y. 441, as contrasted with the more limited frisk does not require of the appellee the total surrender of its position. Not even *Taggart* may be read to permit a general search for evidence, for the case plainly holds that the Court of Appeals did no more than authorize a search to *disarm* the suspect. We said in our main brief that section 180-a "... only allows the policeman to *disarm* him if, after a superficial patting of his outer clothing, he determines that he has a weapon" (p. 14). Now in view of *Taggart* it would appear that a search is permitted, but a search for the same purpose as we proposed the frisk; the *disarming* of the suspect remains central. Since it does, we are right back to a determination of whether it is reasonable that a police officer be permitted to search a suspect whose potential for and capability of violent reaction to the initial permissible stop cannot be assessed where the officer has a reasonable suspicion that such a suspect is armed. It is submitted that it is reasonable and more; it is indispensable.

**CONCLUSION**

**The judgment appealed from should be affirmed.**

Respectfully submitted,

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